HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.33404 of 1998

Dated 26th day of June, 2007

Between:

N.Sudershan .. Petitioner

And

The Commissioner of Prohibition & Excise, A.P., Hyderabad and two others .. Respondents

O R D E R:

This writ petition is filed to quash the proceedings dated 4.11.1998 issued by the 1st respondent.

The petitioner asserts that he is the owner of a lorry bearing No.AP11T 2658. On 19.1.1997, while his lorry was transporting Sponge Iron from Humnabad to Medchal, the 3rd respondent-Prohibition and Excise Inspector stopped the lorry, checked and found 624 bottles of Bag Piper and Sangram Whisky in it, and after seizing the contraband, registered a crime against the driver and the cleaner of the lorry. When the petitioner filed a petition for release of the crime vehicle for interim custody, the 2nd respondent-Deputy Commissioner of Prohibition & Excise dismissed the petition by his order, dated 4.3.1997. When the petitioner preferred an appeal, the 1st respondent-Commissioner of Prohibition and Excise released the sponge iron to the party concerned, but dismissed the application for release of the lorry, by his order, dated 21.4.1997. Later, when the petitioner filed W.P.No.9738 of 1997, this Court, on 1.5.1997, ordered release of the lorry on condition that the petitioner furnishes bank guarantee in a sum of Rs.1,25,000/-. Now, the grievance of the petitioner is that the 2nd respondent, without giving reasonable opportunity to the petitioner's counsel, issued the proceedings dated 11.7.1998 confiscating the petitioner's lorry. When the petitioner preferred a statutory appeal, the 1st respondent, by his proceedings dated 4.11.1998, dismissed it

confirming the order of confiscation.

Heard the learned counsel for the petitioner, the learned Government Pleader for Prohibition and Excise and perused the material placed on record.

From a perusal of the order passed by the 2nd respondent-Deputy Commissioner of Prohibition and Excise, it is clear that he did not attribute knowledge about the illegal transportation of the contraband to the petitioner who is the owner of the crime vehicle. In fact, in the order, it is stated that during the course of interrogation, the driver of the lorry confessed that he had allowed the liquor concealing under sponge iron powder for illegal transportation to Bollaram, Hyderabad on hire charges of Rs.10,000/-. No doubt, the quantity is huge and the same is illegal transportation, but when once it is established that the owner of the vehicle does not have knowledge about the illicit transportation of the liquor, the vehicle belonging to him cannot be seized or confiscated. On this aspect, a Full Bench of this Court, in W.P.No.157 of 2000 dated 11.7.2002, took a view that knowledge of owner about the contraband goods transported by his driver is more important.

In the light of the above discussion, this Court is of the view that the crime vehicle, which was seized by the 3rd respondent, cannot be confiscated to the State.

In the result, this writ petition is allowed setting aside the Proceedings dated 4.11.1998 issued by the 1st respondent, and the vehicle bearing No. No.AP11T 2658 is ordered to be released in favour of the petitioner. Inasmuch as this Court, on 1.5.1997, while admitting W.P.No.9738 of 1997, ordered release of vehicle on condition that the petitioner furnishes bank guarantee in a sum of Rs.1,25,000/-, this bank guarantee is ordered to be returned to the petitioner and it is open to him to encash the same. No costs.

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26.06.2007

bcj